

AMENDED IN ASSEMBLY JUNE 11, 2014
AMENDED IN SENATE JANUARY 22, 2014
AMENDED IN SENATE JANUARY 6, 2014
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 245

Introduced by Senator Correa

February 12, 2013

An act to amend Section 1632 of the Civil Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 245, as amended, Correa. Contracts.

Existing law states findings and declarations of the Legislature relating to consumer information and protections afforded to the state's diverse population in which the number of Californians who speak languages other than English as their primary language at home has increased.

This bill would revise information contained in those findings and declarations relating to the languages most widely spoken in households with limited English proficiency and the percentage of Californians who speak a language other than English in their homes, based upon more recent census data.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1632 of the Civil Code is amended to
2 read:

1 1632. (a) The Legislature hereby finds and declares all of the
2 following:

3 (1) This section was enacted in 1976 to increase consumer
4 information and protections for the state's sizeable and growing
5 Spanish-speaking population.

6 (2) Since 1976, the state's population has become increasingly
7 diverse and the number of Californians who speak languages other
8 than English as their primary language at home has increased
9 dramatically.

10 (3) According to data from the American Community Survey,
11 which has replaced the decennial census for detailed socioeconomic
12 information about United States residents, approximately 15.2
13 million Californians speak a language other than English at home,
14 based on data from combined years 2009 through 2011. This
15 compares to approximately 19.6 million people who speak only
16 English at home. Among the Californians who speak a language
17 other than English at home, approximately 8.4 million speak
18 English very well, and another 3 million speak English well. The
19 remaining 3.8 million Californians surveyed do not speak English
20 well or do not speak English at all. Among this group, the five
21 languages other than English that are most widely spoken at home
22 are Spanish, Chinese, ~~Filipino/Tagalog~~, *Tagalog*, Vietnamese, and
23 Korean. These five languages are spoken at home by approximately
24 3.5 million of the 3.8 million Californians with limited or no
25 English proficiency, who speak a language other than English at
26 home.

27 (b) Any person engaged in a trade or business who negotiates
28 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
29 orally or in writing, in the course of entering into any of the
30 following, shall deliver to the other party to the contract or
31 agreement and prior to the execution thereof, a translation of the
32 contract or agreement in the language in which the contract or
33 agreement was negotiated, that includes a translation of every term
34 and condition in that contract or agreement:

35 (1) A contract or agreement subject to the provisions of Title 2
36 (commencing with Section 1801) of, and Chapter 2b (commencing
37 with Section 2981) and Chapter 2d (commencing with Section
38 2985.7) of Title 14 of, Part 4 of Division 3.

1 (2) A loan or extension of credit secured other than by real
2 property, or unsecured, for use primarily for personal, family, or
3 household purposes.

4 (3) A lease, sublease, rental contract or agreement, or other term
5 of tenancy contract or agreement, for a period of longer than one
6 month, covering a dwelling, an apartment, or mobilehome, or other
7 dwelling unit normally occupied as a residence.

8 (4) Notwithstanding paragraph (2), a loan or extension of credit
9 for use primarily for personal, family, or household purposes in
10 which the loan or extension of credit is subject to the provisions
11 of Article 7 (commencing with Section 10240) of Chapter 3 of
12 Part 1 of Division 4 of the Business and Professions Code, or
13 Division 7 (commencing with Section 18000), or Division 9
14 (commencing with Section 22000) of the Financial Code.

15 (5) Notwithstanding paragraph (2), a reverse mortgage as
16 described in Chapter 8 (commencing with Section 1923) of Title
17 4 of Part 4 of Division 3.

18 (6) A contract or agreement, containing a statement of fees or
19 charges, entered into for the purpose of obtaining legal services,
20 when the person who is engaged in business is currently licensed
21 to practice law pursuant to Chapter 4 (commencing with Section
22 6000) of Division 3 of the Business and Professions Code.

23 (7) A foreclosure consulting contract subject to Article 1.5
24 (commencing with Section 2945) of Chapter 2 of Title 14 of Part
25 4 of Division 3.

26 (c) Notwithstanding subdivision (b), for a loan subject to this
27 part and to Article 7 (commencing with Section 10240) of Chapter
28 3 of Part 1 of Division 4 of the Business and Professions Code,
29 the delivery of a translation of the statement to the borrower
30 required by Section 10240 of the Business and Professions Code
31 in any of the languages specified in subdivision (b) in which the
32 contract or agreement was negotiated, is in compliance with
33 subdivision (b).

34 (d) At the time and place where a lease, sublease, or rental
35 contract or agreement described in subdivision (b) is executed,
36 notice in any of the languages specified in subdivision (b) in which
37 the contract or agreement was negotiated shall be provided to the
38 lessee or tenant.

39 (e) Provision by a supervised financial organization of a
40 translation of the disclosures required by Regulation M or

1 Regulation Z, and, if applicable, Division 7 (commencing with
2 Section 18000) or Division 9 (commencing with Section 22000)
3 of the Financial Code in any of the languages specified in
4 subdivision (b) in which the contract or agreement was negotiated,
5 prior to the execution of the contract or agreement, shall also be
6 deemed in compliance with the requirements of subdivision (b)
7 with regard to the original contract or agreement.

8 (1) “Regulation M” and “Regulation Z” mean any rule,
9 regulation, or interpretation promulgated by the Board of
10 Governors of the Federal Reserve System and any interpretation
11 or approval issued by an official or employee duly authorized by
12 the board to issue interpretations or approvals dealing with,
13 respectively, consumer leasing or consumer lending, pursuant to
14 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
15 1601 et seq.).

16 (2) As used in this section, “supervised financial organization”
17 means a bank, savings association as defined in Section 5102 of
18 the Financial Code, credit union, or holding company, affiliate, or
19 subsidiary thereof, or any person subject to Article 7 (commencing
20 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
21 Business and Professions Code, or Division 7 (commencing with
22 Section 18000) or Division 9 (commencing with Section 22000)
23 of the Financial Code.

24 (f) At the time and place where a contract or agreement
25 described in paragraph (1) or (2) of subdivision (b) is executed, a
26 notice in any of the languages specified in subdivision (b) in which
27 the contract or agreement was negotiated shall be conspicuously
28 displayed to the effect that the person described in subdivision (b)
29 is required to provide a contract or agreement in the language in
30 which the contract or agreement was negotiated, or a translation
31 of the disclosures required by law in the language in which the
32 contract or agreement was negotiated, as the case may be. If a
33 person described in subdivision (b) does business at more than one
34 location or branch, the requirements of this section shall apply
35 only with respect to the location or branch at which the language
36 in which the contract or agreement was negotiated is used.

37 (g) The term “contract” or “agreement,” as used in this section,
38 means the document creating the rights and obligations of the
39 parties and includes any subsequent document making substantial
40 changes in the rights and obligations of the parties. The term

1 “contract” or “agreement” does not include any subsequent
2 documents authorized or contemplated by the original document
3 such as periodic statements, sales slips or invoices representing
4 purchases made pursuant to a credit card agreement, a retail
5 installment contract or account or other revolving sales or loan
6 account, memoranda of purchases in an add-on sale, or refinancing
7 of a purchase as provided by, or pursuant to, the original document.

8 The term “contract” or “agreement” does not include a home
9 improvement contract as defined in Sections 7151.2 and 7159 of
10 the Business and Professions Code, nor does it include plans,
11 specifications, description of work to be done and materials to be
12 used, or collateral security taken or to be taken for the retail buyer’s
13 obligation contained in a contract for the installation of goods by
14 a contractor licensed pursuant to Chapter 9 (commencing with
15 Section 7000) of Division 3 of the Business and Professions Code,
16 if the home improvement contract or installation contract is
17 otherwise a part of a contract described in subdivision (b).

18 Matters ordinarily incorporated by reference in contracts or
19 agreements as described in paragraph (3) of subdivision (b),
20 including, but not limited to, rules and regulations governing a
21 tenancy and inventories of furnishings to be provided by the person
22 described in subdivision (b), are not included in the term “contract”
23 or “agreement.”

24 (h) This section does not apply to any person engaged in a trade
25 or business who negotiates primarily in a language other than
26 English, as described by subdivision (b), if the party with whom
27 he or she is negotiating is a buyer of goods or services, or receives
28 a loan or extension of credit, or enters an agreement obligating
29 himself or herself as a tenant, lessee, or sublessee, or similarly
30 obligates himself or herself by contract or lease, and the party
31 negotiates the terms of the contract, lease, or other obligation
32 through his or her own interpreter.

33 As used in this subdivision, “his or her own interpreter” means
34 a person, not a minor, able to speak fluently and read with full
35 understanding both the English language and any of the languages
36 specified in subdivision (b) in which the contract or agreement
37 was negotiated, and who is not employed by, or whose service is
38 made available through, the person engaged in the trade or
39 business.

1 (i) Notwithstanding subdivision (b), a translation may retain the
2 following elements of the executed English-language contract or
3 agreement without translation: names and titles of individuals and
4 other persons, addresses, brand names, trade names, trademarks,
5 registered service marks, full or abbreviated designations of the
6 make and model of goods or services, alphanumeric codes,
7 numerals, dollar amounts expressed in numerals, dates, and
8 individual words or expressions having no generally accepted
9 non-English translation. It is permissible, but not required, that
10 this translation be signed.

11 (j) The terms of the contract or agreement that is executed in
12 the English language shall determine the rights and obligations of
13 the parties. However, the translation of the contract or the
14 disclosures required by subdivision (e) in any of the languages
15 specified in subdivision (b) in which the contract or agreement
16 was negotiated shall be admissible in evidence only to show that
17 no contract was entered into because of a substantial difference in
18 the material terms and conditions of the contract and the translation.

19 (k) Upon a failure to comply with the provisions of this section,
20 the person aggrieved may rescind the contract or agreement in the
21 manner provided by this chapter. If the contract for a consumer
22 credit sale or consumer lease that has been sold and assigned to a
23 financial institution is rescinded pursuant to this subdivision, the
24 consumer shall make restitution to and have restitution made by
25 the person with whom he or she made the contract, and shall give
26 notice of rescission to the assignee. Notwithstanding that the
27 contract was assigned without recourse, the assignment shall be
28 deemed rescinded and the assignor shall promptly repurchase the
29 contract from the assignee.